



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

EAG:RTP
F.#2011R00779

271 Cadman Plaza East
Brooklyn, New York 11201

May 30, 2012

BY ECF AND HAND DELIVERY

The Honorable Nicholas G. Garaufis
United States District Court
Eastern District Of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Fatt Kwee Wong
Criminal Docket No. 11-372 (NGG)

Dear Judge Garaufis:

The government respectfully submits this letter in advance of the defendant's sentencing, scheduled for June 1, 2012. On February 16, 2012, the defendant pled guilty, pursuant to a plea agreement, to Count One of the above-referenced indictment, charging a violation of 8 U.S.C. § 1324(a)(2)(B)(ii). The offense arises from the defendant's smuggling of nine illegal aliens into the United States on April 26, 2011.

The government is in receipt of the Probation Department's April 18, 2012 Presentence Investigation Report ("PSR"). The government objects to the inclusion in the PSR of a two-point enhancement pursuant to United States Sentencing Guidelines ("U.S.S.G") § 2L1.1(b)(4) for smuggling a minor who was unaccompanied by the minor's parent or guardian (see PSR ¶ 15) because none of the nine illegal aliens that the defendant smuggled was under 16 years of age at the time they entered the United States. See Application Note 1 to U.S.S.G § 2L1.1 (defining minor as "an individual who had not attained the age of 16 years").¹

Rather, the government submits that the following Guidelines calculation is the appropriate Guidelines calculation:

¹ The youngest of the nine illegal aliens was 17 years old at the time she entered the United States and was therefore not a minor for purposes of U.S.S.G. § 2L1.1(b)(4).

Base Offense Level (2L1.1(a)(3))	12
Plus: Offense involved 6-24 unlawful aliens (2L1.1(b)(2)(A))	+3
Less: Acceptance of responsibility (3E1.1(a))	-2
Total:	13

Thus, the government submits that the total offense level is level 13, which, based on a criminal history category of I, carries a range of imprisonment of 12 to 18 months.² However, because of the mandatory minimum sentence of three years' imprisonment pursuant to 8 U.S.C. § 1324(a)(2)(B), the effective Guidelines range of imprisonment is three years. The government submits that a sentence of three years' imprisonment is sufficient but not greater than necessary to comply with the objectives of 18 U.S.C. § 3553(a).

Respectfully submitted,

LORETTA E. LYNCH
United States Attorney
Eastern District of New York

By: /s/
Robert T. Polemeni
Assistant U.S. Attorney
(718) 254-6044

cc: Zoe Dolan, Esq. (by ECF and Email)
Jennifer Fisher, U.S. Probation Officer (by Email)

² The parties' plea agreement provides for a one-level reduction to the defendant's offense level pursuant to U.S.S.G. § 3E1.1(b). However, because the defendant's adjusted offense level prior to the application of the two-point offense level reduction for the defendant's acceptance of responsibility pursuant to § 3E1.1(a) is level 15, an additional one-level reduction for the defendant's timely acceptance of responsibility pursuant to § 3E1.1(b) does not apply. See U.S.S.G. § 3E1.1(b).